

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 385 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MANSIBHAI TEJABHAI

Versus

KM DAVE

Appearance:

MR Mehul Shah for Petitioners

MR RC Kakkad for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 24/03/2000

CAV JUDGEMENT

#. Heard learned counsel for the parties.

#. The challenge has been made by the

plaintiff-petitioner to the order of the Assistant Judge, Jamnagar dated 9/2/96 under which the appeal filed by the respondent No.1 was came to be allowed and the order passed by the Civil Judge (JD), Dwarka below Exh.5 in R.C.S. No.40/99 was vacated. It is true that the respondent No.1 was not party to the suit but the learned counsel for the petitioner does not dispute that the appeal has been filed by him against the order of the learned trial court after grant of permission of the appellate court. It is no more res integra that if a person though he may not be a party to the civil suit any order passed therein if adversely effect his right he has twofold remedies available; firstly either he can go for the review of that order or he can file the appeal against the same if that is appealable with the leave of the court.

#. The learned First Appellate court is correct in its approach that in each case it is not desirable that the aggrieved person first to go to trial court for getting himself impleaded as party in the suit and to seek the cancellation, modification or clarification of the interim order passed by it. From the facts of this case, it is clear that the ultimate aim of the plaintiff-petitioner herein to recover the amount of Rs.6,29,900/=. The learned appellate court is correct in its approach that if we go by this fact then the trial court lacs pecuniary jurisdiction. It is really an abuse of process of court that the litigants are filing a simple suit for declaration and injunction in the matter of high valuation. The courts are to be very careful and see that this class of the litigants are being properly dealt with.

#. The learned Appellate Court is perfectly correct in its approach that the valuation of the suit should have been taken to be Rs.6,29,900/= and not what the plaintiff has stated and felt contended. The suit is for the recovery of the money from the society and its members. The appellate court is correct in its approach that the civil court may not have a jurisdiction in the matter. On these two grounds the learned First Appellate Court has interfered with the order and interim injunction as granted by the trial court has been set aside. There is no perversity in the judgment of the learned First Appellate Court. It is a just and reasonable order passed by the learned First Appellate Court to which no exception can be made. However whatever the findings recorded by the First Appellate Court are only for the purpose of deciding the matter of grant of interim relief. These are not the findings which concludes the

issues.

#. In the facts of this case, the interim injunction granted by the trial court has rightly been vacated and the order of the appellate court below is allowed to stand it will not result in any failure of justice or will not cause irreparable injury to the plaintiff-petitioner. Otherwise also, the plaintiff-petitioner is only praying for interim relief to restrain the occupier of the tenements from making any changes in the construction of the units etc.

#. In the facts of this case I have my own reservation whether also such an interim relief could have been granted by the trial courts or not. In the result this revision application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this court stands vacated. The petitioner is directed to pay Rs.1,000/= towards costs of this Civil Revision Application to the respondent No.1. However it is made clear that whatever findings recorded regarding pecuniary jurisdiction and the jurisdiction of the court to try the suit are only tentative and provisional and not binding on the trial court. The learned Trial Court may not influence by the findings of the Appellate Court while deciding the suit finally on merits.

(S.K.Keshote, J.)

*Pvv